utory interpretation, holding that the statute by naming the seller impliedly excludes the buyer. *State* v. *Rand, supra. Contra, State* v. *Bonner*, 2 Head (Tenn.) 135, overruled by *Harney* v. *State, supra.* Although this ground of interpretation seems insufficient, the resulting construction is reasonable, since the purpose of the statute is principally to protect people against an inherent weakness, and not to punish for yielding to this weakness. This reason does not apply to the particular facts of the principal case, as the defendant was only the buyer's agent. However, there is nothing in the words of the statute to justify the court in so interpreting it as to excuse the purchaser when buying for himself, and hold him liable when buying for others, and hence a refusal to depart from the general rule seems proper. The great weight of authority is in accord with the principal case. *Evans* v. *State*, 55 Tex. Cr. 450, 117 S. W. 167; *Anderson* v. *State*, 32 Fla. 242, 13 So. 435. A few recent cases, however, have held the contrary view. *Buchanan* v. *State*, 4 Okla. Cr. 645, 112 Pac. 32; *State* v. *McFadden*, 151 Mo. App. 479, 132 S. W. 267.

DEATH BY WRONGFUL ACT — NATURE OF DAMAGES RECOVERABLE UNDER FEDERAL STATUTE. — In an action by the intestate's widow under the federal Employers' Liability Act of 1908 to recover damages for the wrongful death of the intestate, the court instructed that the jury could consider the value of the care and advice of the husband. *Held*, that the instruction is erroneous. *Michigan Central R. Co.* v. *Vreeland*, 226 U. S. 59, 33 Sup. Ct. 192.

The statute in question is substantially the same as Lord Campbell's Act, which has been interpreted as allowing merely pecuniary damages as distinguished from damages for mental suffering and grief. STAT. 9 & 10 VICT. c. 93; *Blake* v. *Midland Ry.*, 18 Q. B. 93. Similar state statutes in this country have likewise been so interpreted. *Howey* v. *New England Navigation Co.*, 83 Conn. 278, 76 Atl. 469; *Glawson* v. *Southern Bell Tel. & Tel. Co.*, 9 Ga. App. 450, 71 S. E. 747. See TIFFANY, DEATH BY WRONGFUL ACT, § 154. *Contra, Norfolk & Western Ry.* v. *Cheatwood's Adm'r*, 103 Va. 356, 49 S. E. 489. As an original question, this limited construction seems questionable. The statement in the principal case that it is impossible to set a pecuniary valuation on loss of society and companionship is disproved by the granting of such damages in cases of alienation of affections and criminal conversation. *Adams* v. *Main*, 3 Ind. App. 232, 29 N. E. 792; *Prettyman* v. *Williamson*, 1 Penn. (Del.) 224, 39 Atl. 731. Parasitic damages in accident cases also show that damages for mental suffering and injured feelings may be estimated. *Warren* v. *Boston & Maine R.*, 163 Mass. 484, 40 N. E. 895; *Consolidated Traction Co.* v. *Lambertson*, 59 N. J. L. 297, 36 Atl. 100. See BURDICK, TORTS, 2 ed., 100. But the danger of undue prejudice in the jury and the practical difficulty in ascertaining such damages make the wisdom of allowing them doubtful. It seems reasonable therefore in a cause of action not recognized at common law to require a clear legislative intention to allow them.

DIVORCE — ALIMONY — POWER TO MODIFY AWARD IN GROSS. — In an action for divorce the court awarded the plaintiff a gross sum as alimony, but at the defendant's request granted an extension of the time for the payment of part of it. The plaintiff meanwhile remarried, and the defendant sought to be relieved from his obligation to pay the sum still due. The trial court refused to grant his petition. *Held*, that it did not abuse its discretion in so doing. *Narregang* v. *Narregang*, 139 N. W. 341 (S. D.).

Equitable decrees will not usually be modified after the expiration of the term during which they are rendered. *Hurd* v. *Goodrich*, 59 Ill. 450; *Snyder* v. *Middle States Loan, etc. Co.*, 52 W. Va. 655, 44 S. E. 250. An award of an annual sum as alimony, however, being based on the wife's right of continuous sup-

port, is by the better view not a final adjudication but subject to subsequent revision. *Olney* v. *Watts*, 43 Oh. St. 499. See 26 HARV. L. REV. 441. *Contra*, *Sampson* v. *Sampson*, 16 R. I. 456, 16 Atl. 711. An award of alimony in gross, on the other hand, changes the duty of continuous support into an obligation to pay immediately a fixed sum of money, and would seem to be a final settlement of the rights of the parties. *Plastee* v. *Plastee*, 47 Ill. 290; *Petersine* v. *Thomas*, 28 Oh. St. 596. Statutes allowing the modification of alimony decrees are, however, sometimes interpreted as applying to awards in gross. *Buckminster* v. *Buckminster*, 38 Vt. 248; *Hopkins* v. *Hopkins*, 40 Wis. 462. Yet it seems clear that when the decree has been carried out there is no longer anything to modify, and since it may generally be enforced by execution without the further aid of equity, the fact that it is still unperformed should be immaterial. Therefore such statutes should be held to have no application to award in gross. *Guess* v. *Smith*, 100 Miss. 457, 56 So. 166. *Cf. Krauss* v. *Krauss*, 127 N. Y. App. Div. 740, 111 N. Y. Supp. 788. Since the award in the principal case was virtually one in gross, it would seem that the statute gave the trial court no discretion which it could abuse. See S. D. CIV. CODE, § 92.

EQUITY — JURISDICTION — ACTION BY MUNICIPALITY AGAINST TAX COLLECTOR FOR TAXES COLLECTED. — The plaintiff township filed a bill in equity praying that the defendant, a tax collector, be ordered to account for taxes collected and to pay over money still due. *Held*, that equity has no jurisdiction. *Franklin* v. *Crane*, 85 Atl. 408 (N. J.).

Agents to collect are generally held to be in a fiduciary relation. *Stoll* v. *King*, 8 How. Pr. (N. Y.) 298; *In re Gent*, 40 Ch. D. 190. A tax collector would clearly seem to be a fiduciary. *Hill* v. *Fleming*, 128 Ky. 201, 107 S. W. 764. He is treated as a trustee in that if he uses the money he is guilty of embezzlement. *Commonwealth* v. *Fischer*, 113 Ky. 491, 68 S. W. 855. Moreover, he is not allowed a plea of set-off. *City of Waterbury* v. *Lawlor*, 51 Conn. 171. And, if the fund is destroyed in spite of due care, he should be absolved from liability. *Ross* v. *Hatch*, 5 Ia. 149. The jurisdictions holding a tax collector absolutely liable for money collected proceed on grounds of public policy. *United States* v. *Presscott*, 3 How. (U. S.) 578. They do not consider such an officer to be a mere debtor. *United States* v. *Thomas*, 15 Wall. (U. S.) 337. The decision in the principal case may be merely a matter of procedure since the township might have sued in *indebitatus assumpsit*. *Allen* v. *Impett*, 8 Taunt. 263. But see *Bartlett* v. *Dimond*, 14 M. & W. 49, 56. But it seems anomalous for equity to refuse to exercise its exclusive jurisdiction, because the law also gives a remedy.

EVIDENCE — DOCUMENTS — RECITALS IN ANCIENT DEEDS. — The plaintiff claimed land under a conveyance from an assignee in bankruptcy. The plaintiff offered as the principal evidence of the transfer of title to the assignee a recital of this in the assignee's deed, which was over thirty years old but under which there had been no possession of the land in question. *Held*, that the recitals are admissible in evidence. *Lacey* v. *Southern Mineral Land Co.*, 60 So. 283 (Ala.). See NOTES, p. 544.

EVIDENCE — RES GESTÆ — VIOLATION OF RULES OF RAILWAY COMPANY AS EVIDENCE OF NEGLIGENCE. — In an action against a street railway company for the death of the plaintiff's intestate, who was killed while getting on to a moving car, evidence of the rules of the company regulating the conduct of motormen was excluded. *Held*, that the exclusion is not error. *Hoffman* v. *Cedar Rapids & M. C. Ry. Co.*, 139 N. W. 165 (Ia.).

For a discussion of the principles involved, see 17 HARV. L. REV. 421.